

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD #99-XX(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ASBESTOS LICENSE RENEWALS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 18 pertaining to asbestos license renewals. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 18-1-6.

AUTHORITY: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6.

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forego this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under IC 13-14-9-3 would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

In 1986, Congress enacted the Asbestos Hazard Emergency Response Act (the Act) that mandated a regulatory program to address asbestos hazards in schools. The Act required the U.S. EPA to develop an asbestos plan that provided for the training of persons performing asbestos-related work in schools and to obtain accreditation to demonstrate proficiency as a prerequisite for performing this work. Persons covered by the original plan included those who inspected school buildings for asbestos containing material; developed asbestos management plans for schools; and designed or conducted response actions with respect to friable asbestos containing material.

The Act also required states to adopt a state accreditation program that was no less stringent than that described in the federal plan. In 1988, the air pollution control board (board) adopted 326 IAC 18-1. This new article incorporated the requirements of the federal plan by establishing training (accreditation) requirements and initiating a licensing program for those persons working in Indiana.

On November 28, 1990, Congress enacted the Asbestos School Hazard Abatement Reauthorization Act (the Reauthorization Act) and expanded the accreditation procedures required for persons who work with asbestos-containing materials in public and commercial buildings as well as schools. To meet the requirements of the Reauthorization Act, the board adopted 326 IAC 18-3 and it became effective on January 4, 1991.

The board revised 326 IAC 18 in 1998 to provide clarifications to rules for applicants, training providers, and contractors for initial and renewal license applications. 326 IAC 18-1 and 326 IAC 18-3 were merged into one (1) rule to eliminate repetitious and redundant sections and to provide consistency among pertinent and similar sections. Other amendments were made to the rules to clarify existing policy and procedures and to eliminate problems encountered by staff when processing license applications.

Three (3) new subsections were added to 326 IAC 18-1-5 (Asbestos license; application) and should have been added to 326 IAC 18-1-6 (renewal of asbestos license) to maintain consistency of sections. The first subsection specifies that applications are valid for one (1) year if deemed incomplete. The second added subsection concerns the authority of the department to select and re-test a random sample of applicants for an asbestos license to take and pass a test given by the department. In the event that the test is not passed, the applicant must retake the training course. The third subsection states that applications must be submitted in writing and will be mailed to the applicant upon processing.

FINDINGS

The commissioner of IDEM has prepared written findings regarding rule making on procedures for asbestos license renewals. These findings are prepared under IC 13-14-9-7 and are as follows:

(1) This rule making is a correction to the amendments filed on May 10, 1998 to provide requirements for a renewal license that are consistent with the requirements for an initial license. It has been brought to the department's attention that three (3) subsections added to 326 IAC 18-1-5 (asbestos license; application) were left out of 326 IAC 18-1-6 (asbestos license; renewals). During the first rule making, there was opportunity to comment during two (2) thirty (30) day comment periods and during the preliminary and final adoption hearings at the state level. No comments were received on these sections.

(2) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.

(3) The draft rule is hereby incorporated into these findings.

John M. Hamilton
Commissioner

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#99-XX(APCB) Asbestos license renewals
Janet McCabe
Assistant Commissioner
Office of Air Management
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Management, 100 North Senate Avenue, Indianapolis, Indiana, Monday through Friday between 8:15 a.m. and 4:45 p.m.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0430.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by June 30, 1999.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Development Section, Office of Air Management, (317) 232-8229 or (800) 451-6027, press 0 and ask for extension 2-8229 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 18-1-6, AS AMENDED AT 21 IR 3754, IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-6 Renewal of asbestos license

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6

Affected: IC 13-11-1-158; IC 13-17

Sec. 6. (a) Any person seeking to renew an asbestos license as an asbestos inspector, management planner, project designer, project supervisor, ~~work~~, **worker**, contractor, or asbestos waste disposal manager shall meet the following requirements:

- (1) Have possessed a valid asbestos license within the previous six (6) months.
- (2) Have attended, within the previous twelve (12) months, an approved refresher training course for disciplines under which the person was previously accredited. In the case of a person seeking to renew an asbestos license as a management planner, the person will be required to have attended both the inspector refresher and the management planner refresher training courses.
- (3) Submit a completed application on forms provided by the department and include a copy of the certificates of training indicating that the person successfully completed the refresher

training course and written examination.

(4) Pay the license application fee as specified in section 9 of this rule.

(b) Any person seeking to renew an asbestos license as an asbestos removal contractor by the department shall include in the application updated information as required in section 5(b)(5) through 5(b)(10) of this rule if any information has changed during the previous twelve (12) months. The contractor shall routinely examine and update his standard operating procedures manual to reflect the compliance assurance methodologies that meet current federal, state, and local regulations or other laws pertaining to asbestos.

(c) If the department determines the information on the application to be incomplete, the applicant will be requested to submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire and the fee is not transferable.

~~(c)~~ (d) The applicant shall provide two (2) copies of a clear and recent one and one-half (1 ½) inch **by one and one-half (1 ½) inch** identifying color photograph at the time of application to be attached by the department to the face of the asbestos license prior to issuance of the license by the department.

(e) In addition to the requirements in subsection (a)(2) through (a)(3), the department may require an applicant to take an examination administered by the department. The examination shall cover only the discipline for which the applicant is seeking the renewal license. The department shall deny the application if the applicant does not receive a passing score of seventy percent (70%). If the department denies the application, the certificate of training is invalid and the applicant must retake and pass the refresher training course for which the applicant is seeking a license renewal.

~~(d)~~ (f) The department shall review the application and shall make a determination as to the eligibility of the person. The department shall issue an asbestos license to any person who fulfills the requirements established by this rule. However, the department may deny an application for renewal of an asbestos license based on any of the criteria listed in section 7 of this rule, as applicable, or for failure to comply with any other provision of this rule.

(g) Applications must be completed in writing and submitted for processing. The department shall not process applications on a walk-in basis or process applications over the telephone. If the application is approved, the license will be sent to the applicant via the U.S. Postal Service to the address as listed on the application.

~~(e)~~(h) Any individual who has had an eighteen (18) month time lapse between any two (2) training courses of the same discipline shall be required to attend an initial training course for the discipline in which they are seeking to be licensed. (*Air Pollution Control Board; 326 IAC 18-1-6; filed Sep 23, 1988, 1:45 p.m.: 12 IR 272; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2744; filed May 12, 1998, 9:15 a.m.: 21 IR 3754*)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2 and IC 13-14-9, notice is hereby given that

on September 1, 1999 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 18-1-6.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996 Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Suzanne Whitmer, Regulatory Development Section, Office of Air Management, (317) 232-8229 or (800) 451-6027, press 0 and ask for extension 2-8229 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

*Attn: Sandy Meanor, ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015*

or call (317) 233-1785. Speech and hearing impaired callers may contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Management, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.